

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

GEORGE M. KRAEMER and PATRICIA A.  
KRAEMER, husband and wife,

Plaintiffs,

v.

**LONE STAR INDUSTRIES, INC.**, individually  
and as successor-in-interest to PIONEER SAND  
& GRAVEL COMPANY; **METROPOLITAN  
LIFE INSURANCE COMPANY**; and **VWR  
INTERNATIONAL, LLC**;

Defendants.

NO.

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §1442(a)(1)

[Federal Officer Removal]

King County Superior Court  
Cause No. 20-2-14616-1 KNT

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON:

PLEASE TAKE NOTICE that Defendant Lone Star Industries, Inc. (“Lone Star”), by and  
through its undersigned counsel of record, removes the above-entitled action from the Superior  
Court of the State of Washington, in and for the County of King, to this Court, pursuant to 28  
U.S.C. §§1442(a)(1) and 1446.

This action is a civil action over which this Court has subject-matter jurisdiction under 28  
U.S.C. §1331, as the action arises under the Constitution, laws, or treaties of the United States

1 within the meaning of 28 U.S.C. §1331, by virtue of Plaintiffs' attempt to adjudicate claims with  
2 respect to persons acting under an officer of the United States pursuant to 28 U.S.C. §1442(a)(1).

3 The grounds for removal are as follows:

4 1. On October 1, 2020, Plaintiffs filed a civil action in the Superior Court of the  
5 State of Washington, in and for the County of King, entitled *George M. Kraemer and Patricia A.*  
6 *Kraemer, husband and wife, v. Lockheed Shipbuilding Company, et al.*, Case No. 20-2-14616-1  
7 KNT. Plaintiffs' Complaint for Personal Injuries claimed liability based upon the theories of  
8 product liability, negligence, premises liability, conspiracy, unsafe workplace, strict liability for  
9 abnormally dangerous activities, and any other applicable theory of liability. Lone Star was  
10 personally served with the Summons and Complaint through its registered agent on October 5,  
11 2020. A true and accurate copy of that Complaint is attached as Exhibit A to the Declaration of  
12 Zackary A. Paal in Support of Defendant Lone Star Industries, Inc.'s Notice of Removal ("Paal  
13 Dec.")

14 2. On March 10, 2021, an Order voluntarily dismissing Lone Star without prejudice  
15 was entered by the King County Superior Court. *See* Exhibit B to the Paal Dec.

16 3. On April 22, 2021, counsel for Lone Star received notice that Plaintiffs had  
17 amended their complaint to add Lone Star as a defendant and provided counsel with a copy of  
18 the Third Amended Complaint for Personal Injuries. *See* Exhibit C to the Paal Dec., the Third  
19 Amended Complaint.

20 4. Plaintiffs allege at page 2 of their Third Amended Complaint that Mr. Kraemer  
21 has been diagnosed with mesothelioma caused by exposure to asbestos and that his exposure to  
22 asbestos included "take home" exposure from his father who worked in Seattle area shipyards.

23 5. On April 23, 2021 Plaintiffs' counsel sent to Lone Star's counsel Plaintiff's  
24 Second Amended Responses to Style Interrogatories ("Style Rogs"). Page 8 of the Style Rogs  
25 sets forth Mr. Kraemer's claimed exposures to asbestos, which include exposures based on work

1 performed by Mr. Kraemer's father, Charles Kraemer, at Todd Shipyard ("Todd") and Puget  
 2 Sound Bridge and Dredging (f/k/a "Lockheed") in Seattle between 1942 and 1945. *See* Exhibit  
 3 E to the Paal Dec.

4 6. On information and belief, and based on prior asbestos cases involving the two  
 5 shipyards, both Todd and Lockheed worked extensively and almost exclusively on U.S. Navy  
 6 ships during World War II. Paal Dec., at ¶ 7.

7 7. On May 20, 2021 Plaintiffs' counsel informed counsel for Lone Star of  
 8 developments in the case during the period of time after Plaintiffs' counsel's offer of a dismissal  
 9 with prejudice to Lone Star, which included confirmation, through Charles Kraemer's Social  
 10 Security records, that Charles Kraemer worked as an insulator at Todd, which allegedly exposed  
 11 his family to asbestos. Paal Dec., at ¶ 8.

12 8. 28 U.S.C. §1442(a)(1) provides:

13 A civil action or criminal prosecution commenced in a State court  
 14 against any of the following may be removed by them to the  
 15 district court of the United States for the district and division  
 embracing the place wherein it is pending:

16 (1) The United States or any agency thereof or any officer (or any  
 17 person acting under that officer) of the United States or of any  
 18 agency thereof, sued in an official or individual capacity for any  
 19 act under color of such office or on account of any right, title or  
 authority claimed under any Act of Congress for the apprehension  
 or punishment of criminals or the collection of the revenue.

20 The basis for the removal of this action is that it involves a person - Lone Star - that acted  
 21 under the authority of officers of the United States or any agency thereof, in this case, the U.S.  
 22 Navy, within the meaning of 28 U.S.C. §1442(a)(1). *Mesa v. California*, 489 U.S. 121, 124–25  
 23 (1989); *Pack v. AC&S, Inc.*, 838 F. Supp. 1099, 1101 (D. Md. 1993).

24 9. In *Fung v. Abex Corp.*, 816 F. Supp. 569 (N.D. Cal. 1993), the court addressed the  
 25 propriety of the removal of a case involving the alleged exposure to asbestos while aboard

1 submarines manufactured by General Dynamics. In denying plaintiffs' motion to remand, the  
2 Court stated in *Fung* that General Dynamics would satisfy the removal provisions under 28  
3 U.S.C. §1442(a)(1) if it "can (1) demonstrate that it acted under the direction of a federal officer,  
4 (2) raise a federal defense to plaintiffs' claims, and (3) demonstrate a causal nexus between  
5 plaintiffs' claims and the acts it performed under color of federal office." *Id.* at 571–72; citing  
6 *Mesa, supra*, 489 U.S. at 124-25.

7       10. In the present case, during the relevant time period, if Lone Star was somehow  
8 involved in work performed on ships for the U.S. Navy as Plaintiffs allege, such work was  
9 necessarily performed pursuant to contracts and specifications executed by an officer of the  
10 United States - the U.S. Navy.

11       11. If Lone Star performed work or supplied products for work performed on ships  
12 for the U.S. Navy during the time period in question, as Plaintiffs allege, that work would have  
13 been done pursuant to contracts that mandated adherence to comprehensive and detailed  
14 specifications the U.S. Navy created regarding, among other things, the use and installation of  
15 asbestos-containing products on U.S. Navy ships. Therefore, under the terms of their contracts  
16 with the U.S. Navy, the work performed at Todd or Lockheed on ships for the U.S. Navy would  
17 have been necessarily completed under the authority and control of an officer of the United  
18 States. Thus, all phases of the work on U.S. Navy ships at Todd or Lockheed by Lone Star or  
19 that involved products allegedly supplied by Lone Star would have been performed pursuant to  
20 U.S. Navy contracts and specifications under the control and supervision of officers of the U.S.  
21 Navy.

22       12. Moreover, Lone Star can and will assert a federal defense to this action. If Lone  
23 Star performed work at or supplied products to Todd or Lockheed for U.S. Navy ships, that work  
24 was performed and the products were supplied pursuant to contracts with, and under the  
25 supervision of, the United States government. Any recovery by Plaintiffs is therefore barred by

1 consequence of the judicially-recognized doctrine of immunity conferred upon that contractual  
2 relationship and any occurrences arising therefrom, otherwise known as the government  
3 contractor defense, as noted in *Boyle v. United Technologies Corp.*, 487 U.S. 500, 509–11  
4 (1988); *Niemann v. McDonnell Douglas Corp.*, 721 F. Supp. 1019, 1021–23 (S.D. Ill. 1989).

5 13. Finally, if Lone Star performed any work at or supplied products to Todd or  
6 Lockheed for U.S. Navy ships, Lone Star would have acted under color of a federal officer or  
7 agency in doing so. This makes removal of this civil action pursuant to 28 U.S.C. §1442(a)(1)  
8 proper. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006); *Williams v.*  
9 *Brooks*, 945 F.2d 1322, 1324 n.2 (5th Cir. 1991).

10 14. Should Plaintiffs file a motion to remand this case, Lone Star respectfully requests  
11 an opportunity to respond more fully in writing, including the submission of affidavits,  
12 additional exhibits, and authorities.

13 15. Because Lone Star would have been acting under an officer of the United States  
14 pursuant to 28 U.S.C. §1442(a)(1), Lone Star is not required to notify and obtain the consent of  
15 any other defendant in this action to remove Plaintiffs' action as a whole under 28 U.S.C.  
16 §1442(a)(1). *Ely Mines, Inc. v. Hartford Accident & Indem. Co.*, 644 F.2d 1310, 1315 (9th Cir.  
17 1981).

18 16. Lone Star has not yet filed an Answer to Plaintiffs' Third Amended Complaint in  
19 the above-entitled matter.

20 17. Written notice of the filing of this Notice of Removal will be given to Plaintiffs  
21 and the other defendants in this action, together with a copy of the Notice of Removal to  
22 Plaintiffs and supporting papers with the Superior Court of the State of Washington, in and for  
23 the County of King, as required by 28 U.S.C. §1446(d).

24 18. This Court is the District Court of the United States for the district and division  
25 embracing the place where the original state court action was filed and is, therefore, the

appropriate court for this removal.

WHEREFORE, Lone Star hereby removes this action to this Court.

DATED May 21, 2021.

FOLEY & MANSFIELD, PLLP

BY: s/ Zackary A. Paal  
BY: s/ Howard (Terry) Hall  
Zackary A. Paal, WSBA #45077  
Howard (Terry) Hall, WSBA #10905  
FOLEY & MANSFIELD, PLLP  
999 Third Avenue, Suite 3760  
Seattle, WA 98104  
Telephone: (206) 456-5360  
Fax: (206) 456-5361  
Email: [zpaal@foleymansfield.com](mailto:zpaal@foleymansfield.com)  
[thall@foleymansfield.com](mailto:thall@foleymansfield.com)  
[asbestos-sea@foleymansfield.com](mailto:asbestos-sea@foleymansfield.com)  
Attorneys for Defendant  
Lone Star Industries, Inc.

**CERTIFICATE OF SERVICE**

I, Lori L. Burley, declare that I am employed by the law firm of Foley & Mansfield, PLLP, 999 Third Avenue, Suite 3760, Seattle, King County, Washington; that I am over 18 years of age and not a party to this action.

[ X ] **(By E-Service)** I hereby certify that on this date I electronically filed the foregoing document with the U.S. District Court for the Western District of Washington at Seattle using the CM/ECF system, which will send notification to all parties of record.

[ X ] **(By E-mail)** I caused the foregoing to be delivered via e-mail to firms and persons whose email addresses are listed next to the name of the party represented as listed below:

**Counsel for Plaintiffs**

Matthew P. Bergman  
Madeline F. Bergman  
821 Second Avenue, Suite 2100  
Seattle, WA 98104  
[service@bergmanlegal.com](mailto:service@bergmanlegal.com)

**Counsel for Metropolitan Life Insurance**

Richard G. Gawlowski  
WILSON SMITH COCHRAN & DICKERSON  
901 Fifth Avenue, Suite 1700  
Seattle, WA 98164  
[metlifeasbestos@wscd.com](mailto:metlifeasbestos@wscd.com)  
[gawlowski@wscd.com](mailto:gawlowski@wscd.com)

**Counsel for VWR International, LLC**

Kevin C. Baumgardner  
Maia R. Robbins  
CORR CRONIN LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, WA 98154  
[asbestos@corrchronin.com](mailto:asbestos@corrchronin.com)  
[kbaumgardner@corrchronin.com](mailto:kbaumgardner@corrchronin.com)  
[mrobbins@corrchronin.com](mailto:mrobbins@corrchronin.com)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 21st day of May, 2021 in Seattle, Washington.

s/ Lori L. Burley  
Lori L. Burley, Legal Assistant